

Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia

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Abstract

Crimes committed by juveniles today continue to grow, as well as various law enforcement approaches. Juveniles as legal subjects have special attention not only in matters of children's rights but also in the punishment of children. Various crimes committed by juveniles occur a lot and lead to no longer what is called juvenile delinquency, but a serious crime. The Child Protection Act and the Child Criminal Justice System Law explicitly regulate the protection of children's rights in the context of human rights. Fostering sanctions for juveniles are one of the ways that are encouraged compared to providing severe criminal sanctions, while here another criminal law is a double-edged sword and ultimum remedium. This paper examines efforts to guide children as an alternative sanction in juvenile criminal law. Studies in this paper include studies of Child Criminal Law, Criminal Law, Human Rights, and the Law on Child Protection.

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INTRODUCTION

MANY cases of criminal acts experienced by children occur in Indonesia, this urges law enforcement officials to make efforts to deal with crimes against children. However, if seen at this time what is also a concern of the general public, not a few cases of criminal acts that occur in children are actually carried out by children as well. This adds to the community's concern that it turns out that at a very young age, it is possible for children to become perpetrators of criminal acts.

Various forms of criminal acts can be carried out by children, but in this case the author sees that the criminal acts committed by children are actually different from criminal acts committed by adults. Childhood is a prone time to act, because in childhood children are very vulnerable to various desires to do something, for example crossing walls, ditching, throwing stones and other actions.

Regarding juvenile delinquency, the author argues that juvenile delinquency can basically be divided into two forms, namely pure juvenile delinquency, where juvenile delinquency is juvenile delinquency that does not intersect with criminal law, but actions taken are not commendable such as skipping school. The second delinquency is delinquency that has been included in a crime or commonly called delinquent, this second form of mischief which then requires legal treatment because it has violated criminal law.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak*, hereinafter called as *SPPA Law*), affirms that with regard to Children Confronting the Law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. In connection with a child who commits a crime, he is referred to as a child in conflict with the law. In SPPA, what is meant by a child who has a conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but who is not 18 (eighteen) years old who is suspected of committing a criminal act (Pramukti & Fuady 2018; Sutedjo & Melani 2013).

In handling cases of children as perpetrators of criminal acts, the criminal law used is to use the special procedural law of children stipulated in Law No. 11 of 2012 which has replaced Law No. 3 of 1997 concerning juvenile court. In the judicial process, it turns out that prison sentences are still often handed down by judges in child cases, the authors see from Sri Sutatiek's quote in his book, which states that the 2004 Human Rights Research and Development Agency concluded that the profile of children in conflict with law in Indonesia is more many were sentenced to imprisonment rather than actions, so systematized naughty children underwent fostering at the Children's Correctional Institution (Sutatiek 2013). The results of the study also found that the inadequate atmosphere and facilities within the Penitentiary Center encouraged children to be more psychologically and mentally depressed and isolated from their original environment, so that the inadequate facilities would allow the convict to fulfill their own needs (Sutatiek 2013; Sutedjo & Melani 2013).

Another thing that is feared by the imposition of imprisonment is prisonization. It is important to know that prisonization (imprisonment) is socialization between prisoners in prisons that trigger convicts to learn other forms of crime. The risk of prisonization has increased, given the guidance system in Correctional Institutions in Indonesia according to Wirjono Projodikoro, usually several prisoners are gathered in a room, including placement in their beds and in doing work (Sutatiek 2013).

Another thing that is also the impact of imprisonment is stigmatization that arises, the label of former prisoners will be a detrimental effect of imprisonment received by children in conflict with the law. Thus it will damage the future of children because the community will reject the presence

of former child prisoners, so that children will become isolated from the community (Wangi 2013; Yunus 2013; Arifin 2018).

Therefore, imprisonment is expected to be the final criminal imposition of children in conflict with the law, because of the bad impact of imprisonment on child development. Children in conflict are expected to only get jail terms if indeed the condition of the child is indeed dangerous for the community and must be secured.

Some criminal alternatives can be imposed on children in conflict with the law, one of which is fostering within the institution. With regard to the type of criminal offense, the convict must undergo a series of coaching carried out by the institution in which the institution can be a job training institution or a private or government-led fostering institution. Related to that, the authors see that this form of crime is very good given to children who commit criminal acts because it will avoid the negative impact of imprisonment.

Based on the above background, there are two main things discussed in this paper, which relate to how the criminal relevance of guidance in institutions for children who commit criminal acts with the purpose of punishment in Indonesia; and the urgency of the existence of a fostering institution for children undergoing punishment within institutions in the juvenile justice system in Indonesia.

FOSTERING AS AN ALTERNATIVE SANCTION FOR JUVENILES

THE RISE of criminal acts that occur in the community in Indonesia has become a constant work for law enforcement officers in Indonesia. Various ways and efforts are made in order to overcome and prevent and minimize various criminal acts that occur. It is also felt in tackling various crimes related to children. In relation to criminal acts, children are parties who are very vulnerable to being victims and perpetrators of criminal acts.

In the event that a child becomes a criminal offender, various types of criminal offenses are currently very vulnerable for children. This is triggered by various backgrounds which in the end caused the child to commit a criminal act. As a consequence of a criminal act committed, every child who commits a crime has a criminal responsibility that must be experienced.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is explained that the child who is a criminal offender is referred to as a child in conflict with the law, hereinafter referred to as Child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years suspected committing a crime. With this arrangement, it was explained that basically children who could be held responsible for criminal acts ranged from 12 years to 18 years.

If a child who has not reached 12 years is suspected of committing a crime, the arrangement is regulated in Article 21 SPPA Law which explains that in the event that the child is not 12 (twelve) years of committing or suspected of committing a crime, Investigator, Community Advisor and Professional Social Worker take the decision to hand it back to the parent / guardian; or b. include in education, coaching and mentoring programs in government agencies or Institute for Organizing Social Welfare (*Lembaga Penyelenggaraan Kesejahteraan Sosial*, hereinafter called as LPKS) in agencies that handle the field of social welfare, both at the central and regional levels, no later than 6 (six) months (Wangi 2013; Yunus 2013; Arifin 2018).

From the article explained that the criminal responsibility of a child starts at the age of 12 years, but in the process of detention or conviction of children, it can only be done to children who are 14 years old. The basis for criminal acts for children who are not yet 14 years old can be seen in Article 69 Paragraph 2 which explains that children who are not yet 14 years old can only be sanctioned by action. This suggests that only children aged 14 years can be subjected to criminal punishment by a judge if they commit a crime.

In criminalizing children in Indonesia, SPPA Law has regulated the types of crimes for children. As for the form of crime in Article 71 SPPA Law, it is explained that the criminal form for children is an additional principal and criminal penalty, namely:

- (1) The principal punishment for the Child consists of:
 - a. criminal warning
 - b. criminal terms:
 - 1) coaching or fostering outside the institution;
 - 2) community service; or
 - 3) supervision
 - c. work training
 - d. coaching or fostering in institutions; and
 - e. imprisonment
- (2) The Additional punishment consist of:
 - a. deprivation of profits derived from criminal acts; or
 - b. fulfillment of customary obligations.
- (3) If the material law is threatened with cumulative crimes in the form of imprisonment and fines, criminal penalties will be replaced with job training.
- (4) Crimes imposed on children are prohibited from violating the dignity of the child.
- (5) Further provisions regarding the form and procedure for implementing criminal acts as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be regulated by Government Regulation.

With the regulation of various forms of criminality that can be imposed by judges in handling cases of child cases, then if seen in this case the judge should still pay attention to the principles of legal protection for children

regulated in SPPA Law. It was explained in SPPA Law that criminal deprivation of liberty is the last resort in handling child cases. Basically, with the principle that deprivation of liberty is the last resort, this explains that as much as possible imprisonment is not imposed on children who commit criminal acts. As is known that a little more than the process of imprisonment of a child prison that is carried out will have a negative impact on the child in the process of growth and development.

Therefore in imposing criminal sanctions, the judge has other criminal choices that still pay attention to the aspects of the best interests of the child. One of them is criminal guidance in the institution. Imprisonment for children as part of the *ultimum remedium*, children are sentenced to criminal sentences in the Child Correctional Institution (*Lembaga Pemasyarakatan Khusus Anak*, LPKA) if the circumstances and actions of children will endanger the community. Imprisonment sentences against children are only used as a last resort.

This type of crime is a fostering within an institution carried out at a job training place or a training institution organized by both the government and the private sector. Criminal guidance in the institution is dropped if the circumstances and actions of children do not endanger the community (Makaro 2004). In relation to the choice of punishment for children in conflict with the law, in this case the choice of criminal punishment must also be in accordance with the objectives of punishment for the child who should be wanted.

Maidin explained in his book that the Criminal Justice System has a dual functional dimension, on the one hand it functions as a means of the community to detain and control crime containment, on the other hand the Criminal Justice System also functions for secondary prevention, namely trying to reduce crime among those who have committed criminal acts and those who intend to commit crimes, through the process of detection, punishment and criminal conduct (Gultom 2014). Whereas Muladi, as quoted by Gultom (2014), explains that the juvenile justice system has the aim of:

1. Resocialization and rehabilitation of criminal offenders
2. Eradication of Crime
3. To achieve social welfare

In line with what was conveyed by Muladi, Juvenile Criminal Justice, was held with attention to child welfare (Gultom 2014). Child welfare is important because:

1. Children are the potential and successors of the ideals of the nation whose foundation has been laid by the previous generation;
2. So that every child is able to assume these responsibilities, he needs to have the opportunity to grow, develop naturally;
3. Whereas in the community there are children who experience obstacles to spiritual, physical, social and economic well-being;
4. The child has not been able to maintain himself;

5. That removing these obstacles will only be implemented and obtained if the child welfare business is guaranteed (Wahyono & Rahayu 1993).

The philosophy of Child Criminal Justice is to realize child welfare, therefore law is the basis, guidelines and means of achieving prosperity and legal certainty in order to guarantee the treatment and actions taken; especially for Children (Wahyono & Rahayu 1993). In the legal process involving children as subject of offense, do not ignore their future and still uphold the authority of the law for justice.

According to the Beijing Rule in rule 5.1 it is explained that in the juvenile justice system will prioritize child welfare and will ensure that any reaction to child offenders will always be commensurate with the circumstances of offenders and law violations (Prakoso 2018). It is stated that "The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" (The Beijing Rules 1985).

Whereas in the Convention on the Rights of the Child 1990, the purpose of the justice system is contained in Article 3, stated that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

According to UN Resolution 45/113 dated December 14, 1990, The United Nations of Protection of Juvenile Deprived of Liberty, the Court System for children must uphold children's rights and safety and promote physical and mental well-being in children and prison sentences must be used as a goal last one. Whereas in Law No. 11 of 2012, the aim of the Juvenile Criminal Justice System is to be able to realize a judiciary that truly guarantees the protection of the best interests of children facing the law as the next generation.

In line with the objectives of the criminal justice system for children described above, in criminal law the purpose of punishment is a matter that must be considered by the judge in imposing criminal charges on perpetrators of criminal offenses, including children who commit criminal offenses. In the purpose of punishment, criminal prosecution is directed to the process of fostering the perpetrators of criminal acts, as well as preventing the perpetrators of criminal acts from repeating criminal acts again. The convicted sentence is also able to prepare the criminal offender to return to the community while still providing a crime that does not have a negative impact. Whereas we know that if someone accepts the criminal form of deprivation of independence, the criminal process according to the author has a negative impact on the perpetrators, especially children.

THE URGENCY OF FOSTERING AS AN ALTERNATIVE SANCTION FOR JUVENILES IN INDONESIA

THE IMPOSITION of criminal decisions in the form of fostering children in the institution has relevance to the purpose of punishment which will improve the child who has committed a criminal offense but the child is still given responsibility for the criminal acts that have been committed. The criminal choice for criminal offenders is a matter of considerable importance. The truth is that criminal prosecution of criminal offenders should have values in accordance with the objectives of punishment that are to be achieved. Likewise with the judicial process for children who commit criminal acts, criminal choice is very important to note considering that children who commit crimes have a future that must also be considered (Wangi 2013; Yunus 2013; Arifin 2018).

One of the criminal sanctions that recognized as an alternative sanction for a child who commits a crime other than a criminal offense is criminal guidance or fostering in the institution. This type of crime is regulated in Article 80 which explains that:

- 1) Fostering within the institution is carried out at work training sites or coaching institutions organized by both the government and the private sector.
- 2) Fostering in the institution is dropped if the child's condition and actions do not endanger the community.
- 3) Fostering in institutions is carried out in a minimum of 3 (three) months and no later than 24 (twenty four) months.

Referring to Article 80, that criminal guidance in the institution can be imposed on the child who is a criminal offender. According to the author, this criminal choice is an alternative to other basic forms of crime other than criminal matters other than imprisonment that need to be optimized. This is

because this form of crime is able to cover up the shortcomings of criminal deprivation of freedom against children.

With the judge imposing criminal decisions on coaching within the institution, this is done by providing guidance conducted at the job training place. Or the convicted child gets guidance at a guiding institution that has been appointed by the judge but not in the LPKA. Therefore, the impact of deprivation of independence will be avoided by children. So, with the existence of criminal guidance in the institution, this will affect the existence of the institution in question. In Article 80 it is explained that the training is carried out at the place of job training and the guiding institution under the government or the private sector is appointed by the judge. In this case the author argues that in SPPA Law it does not clearly regulate with regard to the coaching institution.

In the implementing regulations SPPA Law also does not regulate the institution in the form of whether the institution is an educational institution, social institution, or other form of institution. so the author feels that this has become a shortage of management arrangements in the institution. To be able to optimize the form of guidance within the institution, the existence of the institution is clearly needed. Therefore, the judge in deciding to provide guidance to the child will have a reference regarding which institution fulfills the intended punishment.

CONCLUSION

IN THE current era, children can become perpetrators of crimes. As a form of legal protection for children who are perpetrators of criminal acts, then based on clarification and the results of the research of the author, it is necessary to apply criminal guidance in specific institutions formed by the government. This is important as an alternative form of punishment for child offenders to guarantee and provide legal protection for them as children. Specifically, the authors provide recommendations for the government, so that they will immediately formulate formal and material rules relating to the format of criminal guidance in institutions for offenders. Institutions that are used as a means of criminal guidance can be a type of social institution or educational institution that is adapted to the pattern of child development. Thus, the effect of deterrence and development of children's competencies will be obtained at the same time.

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